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3
4 UNITED STATES DISTRICT COURT
5 WESTERN DISTRICT OF WASHINGTON
6 AT TACOMA

7 DENNIS FLORER,

8 Plaintiff,

9 v.

10 DEVON SCHRUM, BRANDY JONES,
11 CARLA SCHETTLER, ALAN
12 WALTER, RICH MOSS, STEVE
13 SUNDBERG, RON KNIGHT, CHRIS
14 BOWMAN, STEVE SINCLAIRE,
15 STEVE BARKER, ALAN KUNZ, JOHN
16 CAMPBELL, WILL PAUL, S.
17 SUKERT, KURT GRUBB, CANDICE
18 GERMOAU, JULIE SMITH, SANDY
19 DIIMMEL, AL MOSLEY, MILES
20 LAWSON, RON FRAKER, JOHN
21 OYEN, DREW WALTMAN, GARY
22 PIERCE, MARK KUCZA, DON
23 HOLLBROOK, GERMAINE BENSON,
24 LINDA BELANGER, ELDON VAIL,
25 LAURA WYCKOFF-MEYER,
26 GUSTAVE MEZA, ALAN
ROOKSTOOL, EDUARDO MICHEL,
(FNU) DANIEL, LORI SCAMAHORN,
and JOHN DOES 1-2,

Defendants.

No. C11-5135 BHS/KLS

REPORT AND RECOMMENDATION

Noted for: August 12, 2011

Before the Court is Plaintiff's "Motion for This Case Files." ECF No. 51. Having carefully reviewed the motion, Defendants' opposition (ECF No. 54), Plaintiff's Reply (ECF No. 56), and balance of the record, the Court finds that the motion should be denied.

1 **FACTS**

2 On April 27, 2011, Plaintiff was transferred from the Washington State Penitentiary
3 (WSP). He arrived at the Monroe Correctional Complex (MCC) on May 2, 2011. ECF No. 54,
4 Exh. 1 (Declaration of Michael R. Meyer, Sergeant).

5 Pursuant to DOC Policy 440.020, Transfer of Offender Property, when an offender is
6 transferred from one facility to another the DOC will transport at State expense two shipping
7 boxes that do not exceed 25 pounds per box. The policy also states that offenders will arrange
8 for the shipping of their excess property, at their own expense, prior to leaving the facility. DOC
9 Policy 440.000(X)(C). All personal property, including legal documents/papers not needed to
10 meet a court imposed deadline, that exceeds the two-box limit or the additional Superintendent-
11 authorized limit must be shipped at the offender's expense. Offenders have ninety (90) days
12 from the date of transfer to arrange for the shipping, at offender expense, of all excess property.
13 If an offender fails to arrange for the shipment of excess property, at his own expense, the
14 property will be declared abandoned and will be disposed of. ECF No. 54, Exh. 1 (Meyer Decl.),
15 ¶ 2, pp. 1-2; DOC Policy 440.020.

16 Sergeant Meyer, who manages the WSP offender property room (and is not a party to this
17 lawsuit), states that he is familiar with Plaintiff as he was housed at WSP. He states that prior to
18 Plaintiff's transfer, he and a property officer went through all of Mr. Florer's legal boxes at Mr.
19 Florer's request. Mr. Florer made a box of needed legal materials and those were shipped with
20 Mr. Florer as part of the two boxes allowed per DOC policy when Mr. Florer left WSP on April
21 27, 2011. After a brief stay at the Washington Corrections Center (WCC), Mr. Florer arrived at
22 MCC on May 2, 2011. ECF No. 54, Exh. 1 (Meyer Decl.), ¶ 3, p. 2.

1 In addition to the two boxes of property transferred with Mr. Florer at no expense to him,
2 Mr. Florer had acquired 21¹ additional boxes of property including legal materials which have
3 yet to be transferred. Pursuant to RCW 72.02.045(3), Plaintiff was sent notice from the WSP
4 property room informing him that he had insufficient funds to pay for the transfer of property
5 and that therefore, Plaintiff would need to send a money order for \$440.00 to pay for the
6 shipping of his property (shipping costs estimated at \$20 per box). *Id.*, ¶ 5. Sergeant Meyer
7 states that since the time of the original notice sent to Plaintiff, the rates were adjusted. Plaintiff
8 was sent an Amended 90 Day Notice indicating that the cost of shipping of the 22 boxes is
9 \$253.60. *Id.*, Exh. B (90 Day Notice dated June 1, 2011).

11 Mr. Florer does not dispute that he is obligated to incur the costs associated with the
12 shipment of his personal property. However, he asserts that the original estimated cost of
13 \$440.00, and the amended cost of \$253.60, do not truly reflect the cost of shipment. He states
14 that these same boxes were shipped in November 2010 at a cost of \$230.00 and in March 2011
15 shipment of the same boxes cost only \$146.18. ECF No. 52 (Declaration of Dennis Florer).

17 Mr. Florer alleges that now that Superintendent Sinclair “and his cronies” have been
18 served with this lawsuit, Defendant Sinclair has refused to ship the case files in retaliation. ECF
19 No. 51, p. 4.

20 **B. Relief Requested**

21 Mr. Florer seeks the following preliminary injunctive relief:

- 23 1. An Order directing Defendant Sinclair to provide an authentic UPS cost
24 estimate for the asserted \$440.00.

26 ¹ Both Mr. Meyer and Mr. Florer refer to 21 boxes of personal property, but the shipping rate of \$20 per box at a total cost of \$440.00 would be for 22 boxes. The Amended 90 day notice also refers to 22 boxes. Plaintiff also refers in his motion to “21 boxes pending legal documents and 1 box personal property.” ECF No. 51, p. 5.

1 proper prosecution of this case, Mr. Florer has identified no such materials. He does not dispute
2 that he must pay for the shipment of his property. He only disputes the cost. His concerns about
3 cost and allegations that Defendant Siclair is retaliating against him by not shipping his property
4 at a certain rate, are more appropriately addressed through WSP's internal grievance system.
5 Plaintiff fails to show that WSP either lacks an internal grievance system or that he properly
6 exhausted his internal administrative remedies to no avail. Accordingly, there is also no basis for
7 the filing of an amended complaint alleging claims of retaliatory conduct related to the shipment
8 of Mr. Florer's personal property.
9

10 CONCLUSION

11 For the foregoing reasons, the undersigned recommends that the Court **deny** Plaintiff's
12 motion for preliminary injunction (ECF No. 51).

13 Pursuant to 28 U.S.C. § 636(b)(1) and Rule 72(b) of the Federal Rules of Civil Procedure
14 (Fed. R. Civ. P.), the parties shall have fourteen (14) days from service of this Report to file
15 written objections. See also Fed. R. Civ. P. 6. Failure to file objections will result in a waiver of
16 those objections for purposes of appeal. *Thomas v. Arn*, 474 U.S. 140 (1985). Accommodating
17 the time limit imposed by Rule 72(b), the Clerk is directed to set the matter for consideration on
18 **August 12, 2011**, as noted in the caption.
19

20 **DATED** this 19th day of July, 2011.

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22 
23 Karen L. Strombom
24 United States Magistrate Judge
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